

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of San Clemente for an order authorizing the construction of five, permanent one-track at-grade crossings and three permanent one-track grade separated crossings and improvement of three existing crossings for the San Clemente Pedestrian Trail, known as the San Clemente Beach Safety Enhancement Project located on the Southern California Regional Rail Authority Orange Subdivision between railroad mile post 204.0 and 206.0 in the City of San Clemente, County of Orange, California.

Application 03-10-052
(Filed October 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION TO LATE
FILE PROTEST AND REQUIRING SUBMISSION OF PREHEARING
CONFERENCE STATEMENTS**

Background

This application was filed by the City of San Clemente (City) on October 27, 2003; notice appeared in the Daily Calendar on October 31, 2003. The City proposes to construct the San Clemente Beach Safety Enhancement Project (Project), which consists of five new one-track public trail—rail at grade crossings and three new one-track public trail—rail grade separated crossings, as well as improvement of three existing crossings on the Southern California Regional Rail Authority Orange Subdivision between railroad milepost 204.0 and 206.0 in the City.

Timely protests were filed by the Burlington Northern and Santa Fe Railway Company (BNSF) on November 26, 2003 and by Commission staff on December 1, 2003.

A prehearing conference (PHC) has been scheduled for February 6, 2004.

Late-Filed Protest

On December 11, 2003, the State of California, Department of Transportation (CalTrans) filed a Motion to Late-File Protest and Request for Hearing, with the Protest included. No opposition to this motion has been filed. Since CalTrans is a potentially important participant in this proceeding and no party will be prejudiced by its protest being late, the motion should be granted.

PHC Statements

Pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, each party must file and serve a brief PHC statement. The parties may, but are not required to, consult with each other in preparing their PHC statements. The statements must address the following topics:

- the parties' present positions on the issues presented by the application and the protests, if in any way different from the positions set out in the application and the protests;
- which, if any, issues may be resolved without an evidentiary hearing (EH);
- which, if any, issues will require an EH;
- a proposed schedule for this proceeding;
- proposed dates (or a range of dates) for a public participation hearing.

In addition, individual parties must address the following topics:

City

1. The status of the City's application for approval of the Project before the Coastal Commission, including an estimated date for completion of the Coastal Commission's process.
2. The process, if any, that exists to extend the City's license agreement with the Orange County Transportation Authority in the event that this proceeding has not been finally concluded on or before September 30, 2004.

Staff

1. The formal enforcement action, if any, that has been taken with respect to the City's asserted violations of Decision (D) 89-08-025 and D.89-11-035.
2. The written comments, if any, staff has provided to the City about the Project. Copies of any comments should be attached to the PHC statement.

CalTrans

1. Provide a copy of the LOSSAN Corridor Strategic Plan, or, if it is too voluminous, a copy of its Executive Summary.

BNSF

1. The written comments, if any, BNSF has provided to the City about the Project. Copies of any comments should be attached to the PHC statement.

PHC statements, including any attachments, must be filed and served on all parties on the attached temporary service list no later than Monday, February 2, 2004. For purposes of this Ruling, the documents must be *received* no later than Monday, February 2.

IT IS RULED that:

1. The Motion to Late-File Protest and Request for Hearing by the State of California, Department of Transportation, filed December 11, 2003, is granted.
2. All parties must file and serve Prehearing Conference statements as set forth above no later than Monday, February 2, 2004.

Dated January 21, 2004, at San Francisco, California.

/s/ ANNE E. SIMON
Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion To Late-File Protest and Requiring Submission of Prehearing Conference Statements on all parties of record in this proceeding or their attorneys of record.

Dated January 21, 2004, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.